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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,867	01/08/2004	Nicholas Jackson JR.	46536-0002	6131
35161	7590	07/14/2005	EXAMINER	
DICKINSON WRIGHT PLLC			SHARP, JEFFREY ANDREW	
1901 L. STREET NW			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20036			3677	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/753,867	Applicant(s) JACKSON, NICHOLAS	
	Examiner Jeffrey Sharp	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-14 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14 and 16-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

[1] This action is responsive to Applicant's remarks/amendment filed on 4 May 2005 with regard to the Official Office action mailed on 4 January 2005.

#### ***Status of Claims***

[2] Claims 1-8, 10-14, and 16-29 are pending.

#### ***Claim Objections***

[3] Claims 5 and 9 were previously objected to because of informalities. Applicant has successfully addressed these issues in the amendment filed on 4 May 2005. Accordingly, the objections to claims 5 and 9 have been withdrawn.

Claim 18 is currently objected to for missing the word --of-- between "surface" and the other" on line 10.

#### ***Response to Arguments/Remarks***

[4] Applicant's remarks have been fully acknowledged and considered. In response to Applicant's remarks and substantial amendment, all arguments are moot in view of the following new grounds of rejection necessitated by amendment.

Rejections of claims over the Nakanishi '182, Grittner et al. '583, LLauge '650, and Meyer '860 references have been withdrawn after further consideration, in view of Applicant's amendment filed on 4 May 2005.

*New Grounds of Rejection*

*Claim Rejections - 35 USC § 112*

[5] The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[6] Claims 4, 10, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As for claims 4 and 10, Applicant has amended claim 4 such that it is incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: where the sleeve head, insertion tip, and intermediate member lie with respect to said inner and outer members. Claim 10 suffers from deficient claim 4.

Claim 19 recites the limitation "said locking mechanism" in line 2. There is insufficient antecedent basis for this limitation in the claim.

*Claim Rejections - 35 USC § 102*

[7] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3677

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[8] Claims 1-8, 10-14, and 16-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Heflin et al. US-6,652,206.

As stated in the previous Office Action, the Heflin reference substantially teaches all of the limitations set forth in the abovementioned claims.

As for claim 1, Heflin shows an outer member (@ 50,70) having axially-spaced cams (60,80; 64,84), and an inner member (90) integral with the outer member.

As for claim 2, Heflin shows an insertion tip, sleeve head (26), and "intermediate member" between the head and tip on said outer member.

As for claims 3, 4, 13, 14, 22, 25, and 29, the "intermediate member" comprises a first section (52) formed between the head and a living hinge, and a second section (54) formed between said living hinge and insertion tip. A second living hinge (round portions near arrow 50) is located between the insertion tip and first living hinge. Both hinge portions facilitate radially outward displacement of the outer member. Alternatively, the second living hinge may be construed as the living hinge on the second intermediate member arm across from the first intermediate arm.

As for claim 4, as it is understood, the fastener includes an insertion tip (bottom of 90), which has two substantially flat and parallel sides at its distal end.

As for claim 5, the outer member includes a first arm (50) and second arm (70); the inner member is located in between said arms and has an outwardly curved engagement portion

Art Unit: 3677

(96,100; 98,102), and said outer member has an inwardly curved engagement portion (56,76).

When the two engagement portions are in a coupled position, the outer member arms are displaced away from the longitudinal axis. The phrase "as said outer member is moved from the coupled position toward the uncoupled position" may be broadly interpreted as while still partially being in a coupled position.

As for claims 6, 7, 23, 26, and 27, the outer member includes a sleeve head (26), head recess (38), and the inner member (90) has a shank head (92) configured to be "at least partially received" within said head recess (38) in a coupled position.

As for claim 7, the sleeve head (26) employs an angular notch (side of 38, 34) "at least partially within said sleeve head".

As for claims 8 and 20, both sleeve head seat (bottom of 26) and shank head seat (bottom of 92) lie coplanar in a coupled position (figure 5). The shank seat (92) first engages the substrate member (12), and the sleeve head seat (bottom of 26) follows suite in a coupled position.

As for claim 10, the "intermediate portion" between the head (26) and the insertion tip (lower 90) has first (50) and second arms (70) each having a lower projection (58,78) that comes in contact with a cam surface (104,106) of said inner member (90), thereby expanding the outer member as the outer member is moved from the uncoupled position to the coupled position.

As for claim 11, Heflin shows an outer member (@ 50,70), inner member (90) integral with said outer member, a cam (64,84) on one of the outer and inner members, a first releasable locking mechanism (96,98) on one of the inner and outer members axially displaced from the cam (64,84) and having an upper projection (100,102), an upper recess (56,76) located on the

Art Unit: 3677

other of the outer and inner members, wherein the upper projection (100,102) communicates with the upper recess (56,76) in the coupled position.

As for claim 16, one of ordinary skill in the art would readily appreciate that the fastener taught by Heflin et al. is composed of a one-piece plastic part. Note that injection molding is a process, and that the determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985). A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. A comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. *In re Fessman*, 489 F2d 742, 180 USPQ 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. *In re Klug*, 333 F.2d 905, 142 USPQ 161 (CCPA 1964). In an ex parte case, product by process claims are not construed as being limited to the product formed by the specific process recited. *In re Hirao et al.*, 535 F.2d 67, 190 USPQ 15, see footnote 3 (CCPA 1976).

As for claim 17, the outer member has a sleeve head having a "coupling mechanism" (holes 28, 30) for coupling an item to a substrate member (12). For instance, wires or cables could be run through the holes. Heflin et al. expressly disclose this in column 3 lines 58-60.

As for claim 18, element (60) may be construed as an upper projection, and element (64,66) may be broadly construed as an axially-spaced lower projection, the lower projection of

Art Unit: 3677

the outer element engaging a surface (104) of the other inner element to displace the outer member when moved from an uncoupled state to a coupled state, and the other or upper projection (60) engaging a complimentary recess of the other inner member (90). Note that surface (104) and the side of the shank (90) forms an inherent "notch" or "recess", when viewed in profile (best seen in figures 1 and 5).

As for claim 19, the fastener taught by Heflin et al. comprises an outer member (@ 50,70) having a cam(s) (64,84) for displacing an intermediate member (arms 50,70) away from the longitudinal axis and a sleeve head (26), an inner member (90) integral with the outer member and having an insertion tip (bottom of 90) and a shank head (92) which is configured to fit at least partially within a recess (38) of the sleeve head (26). A releasable locking mechanism(s) (96,98) are axially spaced from said cam(s) (64,84), said releasable locking mechanism retaining the fastener in a coupled position (figure 5).

As for claims 21, 24, and 28, the releasable locking mechanism (96,98) is technically "proximate" the shank head (92), as the term proximate can be construed as "relatively near" or "near", which is relatively broad.

Main Entry: prox·i·mate

Pronunciation: 'prāk-s&-m&t

Function: *adjective*

1 : next immediately preceding or following (as in a chain of causation, events, or effects) : being or leading to a particular esp. foreseeable result without intervention —see also *proximate cause* at CAUSE 1

2 : very or relatively close or near <would be sufficiently *proximate* to the



Art Unit: 3677

commencement of the defendant's trial —*Johnson v. New Jersey*, 384 U.S. 719 (1966)> —prox·i·mate·ly *adverb*

Source: *Merriam-Webster's Dictionary of Law*, © 1996 Merriam-Webster, Inc.

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Main Entry: prox·i·mal

Pronunciation: 'präk-s&-m&l

Function: *adjective*

1 a : situated next to or near the point of attachment or origin or a central point <the *proximal* was ... better than the peripheral stump for a graft —*Annual Review of Medicine*>; *especially* : located toward the center of the body <the *proximal* end of a bone> —compare DISTAL 1a b : of, relating to, or being the mesial and distal surfaces of a tooth

2 : sensory rather than physical or social <*proximal* stimuli> —compare DISTAL 2 —prox·i·mal·ly /-E/ *adverb*

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc.

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Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. See also, *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). Therefore, particular placement of said releasable locking mechanism relative to the shank head is irrelevant, so long as said releasable locking mechanism performs the same function.

Art Unit: 3677

*Conclusion*

[9] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

[10] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Sharp whose telephone number is (571) 272-7074. The examiner can normally be reached 7:00 am - 5:30 pm Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3677

### NEW CENTRAL FAX NUMBER

Effective July 15, 2005

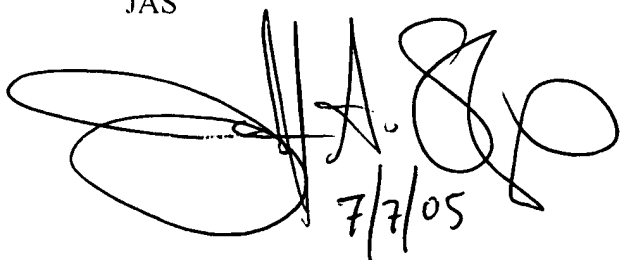
On July 15, 2005, the Central FAX Number will change to 571-273-8300. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number. To give customers time to adjust to the new Central FAX Number, faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and 571-273-8300 will be the only facsimile number recognized for "centralized delivery".

**CENTRALIZED DELIVERY POLICY:** For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), and facsimile transmissions must be sent to the Central FAX number, unless an exception applies. For example, if the examiner has rejected claims in a regular U.S. patent application, and the reply to the examiner's Office action is desired to be transmitted by facsimile rather than mailed, the reply must be sent to the Central FAX Number.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAS



Handwritten signature of JAS, dated 7/7/05.

  
ROBERT J. SANDY  
PRIMARY EXAMINER